

PT 02-5

Tax Type: Property Tax

Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

MIDWEST
YOUNG ARTISTS,
APPLICANT

v.

ILLINOIS DEPARTMENT
OF REVENUE

No. 99-PT-0021
(98-49-0193)
00-PT-0054
(99-49-170)
P.I.N.S: 16-10-401-010¹
(1998)
16-10-401-009
(1999)

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Messrs. Richard B. Sugar and Andrew David of Sugar, Friedberg & Felsenthal on behalf of Midwest Young Artists (hereinafter the “applicant”).

SYNOPSIS: These consolidated proceedings raise the following issues: (1) whether applicant qualifies as an “institution of public charity” within the meaning of Section 15-65(a) of the Property Tax Code, 35 ILCS 200/1-1, *et seq.* (hereinafter the “Code”); (2) whether applicant qualifies as a “school” within the meaning of Section 15-35 of the Code; (3) whether the subject property was used for the exempt purposes specified in Sections 15-35 and/or 15-65(a) during any part of the 1998 assessment year;

1. Parcel 16-10-400-010 was divided for purposes of ensuring that applicant’s portion thereof received its own parcel index number for tax years subsequent to 1998. Dept. Group Ex. No. 1, Docs A, B. The new parcel index number created pursuant to that division, 16-10-401-009, identifies real estate which is exactly the same as the part of Lake County Parcel Index Number 16-10-400-010 that is at issue for the 1998 assessment year. *Id.* However, in the interest of avoiding unnecessary confusion, I shall hereinafter refer to Parcel Index Numbers 16-10-400-010 and 16-10-400-009 as the “subject property” throughout the remainder of this Recommendation.

and, (4) whether the subject property was used for the exempt purposes specified in Sections 15-35 and/or 15-65 during the 1999 assessment year. The underlying controversy arises as follows:

Applicant filed two separate Applications for Property Tax Exemption with the Lake County Board of Review (hereinafter the “Board”). The first, filed February 10, 1999, sought to exempt the subject property from 1998 real estate taxes under 35 ILCS 200/15-35 and/or 200/15-65; the second, filed February 29, 2000, sought to exempt said property from 1999 real estate taxes under the same provisions. Dept. Group Ex. No. 1, Docs A & B.

The Board reviewed these applications and recommended to the Department that the subject property be exempt from: (1) 1998 real estate taxes as of February 27, 1998; and, (2) exempt from real estate taxation for the entire 1999 assessment year. *Id.* The Department rejected these recommendations by issuing two separate determinations. The first, issued April 1, 1999, affected the 1998 assessment year and specifically found that:

- The primary use of the property is not charitable.
- The primary use of the property is not educational.
- The property is not in exempt ownership.
- The property is not in exempt use.

Dept. Group Ex. No. 2, Doc. A.

The second determination, issued May 25, 2000, made the exact same findings concerning the 1999 assessment year. Dept. Group Ex. No. 2, Doc. B. Applicant filed timely appeals as to both denials and later presented evidence at a formal evidentiary

hearing. Following a careful review of the record made at hearing, I recommend that the Department's determinations in these matters be affirmed.

FINDINGS OF FACT:

A. Preliminary Considerations and Description of the Subject Property

1. The Department's jurisdiction over these matters and its positions therein are established by the admission into evidence of Dept. Group Ex. Nos. 1, 2.
2. The Department's positions in these matters are that the subject property does not qualify for exemption from 1998 and 1999 real estate taxes because it is not in exempt ownership and not in exempt use. Dept. Group Ex. No. 2.
3. The subject property is situated on part of the former Fort Sheridan Army Base in Lake Forest, Illinois and improved with a 79,511 square foot music rehearsal and performance facility. Dept. Group Ex. No. 1; Applicant Group Ex. Nos. 1, 2; Applicant Ex. No. 3.

B. Applicant's Organizational and Operational Structure

4. Applicant is an Illinois not for profit corporation which, per its by-laws, is organized for purposes of "deepening music appreciation of great classical music through the performance of high quality orchestra and chamber ensemble literature by young people of elementary, middle, and high school ages, as well as through private teaching and musicianship classes without regard to sex, color, creed, religious or other origin." Applicant Ex. Nos. 4, 15.
5. Applicant is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code pursuant to a determination issued by the Internal

Revenue Service on August 23, 1972. This exemption remained in full force and effect throughout the tax years currently in question. Applicant Ex. No. 5.

6. Applicant is also exempt from Illinois Use and related sales taxes pursuant to a determination originally issued by the Department on March 19, 1993. This determination, which was based on the Department's conclusion that applicant qualified for such exemption under Section 3-5(3) of the Use Tax Act (35 ILCS 105/1, *et seq*; 35 ILCS 105/3-5(3)),² remained in full force and effect throughout the tax years currently in question. Applicant Ex. No. 9.
7. Applicant's operations center around providing instruction, rehearsal and performance experience in various musical ensemble settings. Applicant Group Ex. Nos. 7, 8, 9, 10.

8. These ensembles are divided into the following programs:³

PROGRAM	COMPONENT(S)
Orchestral	<ul style="list-style-type: none">• Basic reading class for beginners• Prep orchestra for 6th-8th grades• Junior orchestra for 7-9th graders• Senior orchestra for high school students
Choral	<ul style="list-style-type: none">• Senior Chorale• Chamber Choir
Jazz	<ul style="list-style-type: none">• Junior jazz ensembles for 7th-9th grade• Senior jazz ensembles for 10-12 graders
	<ul style="list-style-type: none">• Provides instruction in the mechanics and technical

2. Section 3-5(3) of the Use Tax Act provides, in substance, that tangible personal property purchased by a not for profit music or dramatic arts organization that is exempt [from federal income tax] under Section 501(c)(3) of the Internal Revenue Code and that is organized and operated for the presentation of live public performances of musical or theatrical works on a regular basis, is exempt from Illinois Use Tax. 35 ILCS 105/3-5(3). Administrative Notice.

3. Applicant also presented evidence pertaining to a music enrichment program that it initiated in January of 2001. (*See*, applicant Ex. No. 11). However, the 2001 tax year is not at issue in this proceeding. Because each tax year constitutes a separate case of action for exemption purposes (People *ex rel.* Tomlin v. Illinois State Bar Ass'n, 89 Ill. App.3d 1005, 1013 (4th Dist. 1980)) evidence pertaining to a program which was not in effect during either of the tax years currently in question is irrelevant herein.

Music Theory	elements of music and music appreciation to any interested person over six year old, including adults.
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Applicant Group Ex. Nos. 7, 8, 9, 10; Applicant Ex. No. 12.

9. Applicant requires anyone wishing to participate in the prep, junior and senior orchestras, as well as all of the choral and jazz programs, to audition for positions therein. *Id.*; Tr. pp. 46-48.
10. Applicant does not accept everyone who auditions. Nor does it have any mechanism for ensuring that those who demonstrate an ability to perform, but are not accepted based on their auditions, are able to participate. Tr. pp. 35-36, 46-48.
11. Applicant does not require any formal audition for the reading orchestra. It does, however, suggest that prospective participants: (a) have begun the process of learning to read music; (b) have more than a beginning level of instrumental proficiency if they are string players; and, (c) submit to an entry interview. Applicant Group Ex. No. 10; Applicant Ex. No. 12; Tr. p. 187.
12. Applicant does not require anyone wishing to participate in the music theory programs to undergo any type of audition *per se*. It does nevertheless: (a) suggest that prospective participants have some basic score reading ability; and, (b) determine each prospective participant's initial level of conceptual understanding via interviews and written diagnostic tests. Applicant Group Ex. No. 9.
13. All of applicant's programs are semester based. The first semester begins in September and ends in mid-January; the second runs from mid-January

through May; the third, or summer semester, is optional and runs for six weeks in June and July. Applicant Ex. No. 12.

14. Applicant charges fees ranging from \$125.00 to \$250.00 per semester for participation in its programs. It offers financial aid, scholarships and work study to ensure that no one that is admitted is denied access to its programs for financial reasons. Applicant Group Ex. Nos. 7, 8, 9,10; Applicant Ex. No. 12.

15. Approximately 350 students participated in applicant's programs during 1998 and 1999. Approximately 24% to 28% of these participants received some sort of financial assistance. Tr. pp. 33, 35, 44.

16. Applicant holds numerous concerts and other programs which enable its ensembles to perform in various venues. Most of these concerts were open to the public without charge. Applicant Ex. No. 14.

17. Applicant's ensembles gave free concerts at Northwestern University, the Wheeling Senior Pavilion, the Evanston Public Library, The King Senior Citizen's Home in Evanston, the Chicago Botanical Gardens and numerous other venues during 1998 and 1999.⁴

C. Applicant's Financial Structure

18. Applicant operates on a fiscal year that commences on September 1 of each calendar year and ends on August 31 of the immediately ensuing calendar year. Applicant Ex. Nos. 27, 28.

4. For a complete listing of performances and venues, *see*, Applicant Ex. No. 14

19. Applicant's sources of revenue for its 1998, 1999 and 2000 fiscal years were as follows:

SOURCE	TOTAL REVENUES⁵	% OF TOTAL⁶
Student Tuition & Fees	\$ 816,897.14	25%
Capital Campaign	\$ 255,985.36	8%
Competition Fees	\$ 27,079.10	1%
Advertising Revenue	\$ 34,738.00	1%
Ticket Sales	\$ 72,568.75	2%
Tour Income	\$ 77,906.25	2%
In-Kind Donations	\$ 75,431.87	2%
Silent Auction	\$ 36,574.00	1%
Donations & Grants	\$ 1,387,065.61	42%
Special Concerts	\$ 10,090.00	<1%
Interest Income	\$ 39,806.15	1%

5. The figures shown on the above charts are derived from the financial statements admitted as Applicant Ex. Nos. 27 and 28. These statements present applicant's financial structure on the basis of fiscal, rather than calendar, years. The Property Tax Code, however, defines the term "year" as meaning "calendar year" (35 ILCS 200/1-155). Because applicant's fiscal year (September 1 through August 31) does not conform to a "calendar year" (January 1 through December 31), it is necessary to present applicant's fiscal structure on the basis of combined figures for its 1998, 1999 and 2000 fiscal years. Thus, for example, \$816,897.14 in total revenues from student revenues and fees is equal to the sum of \$229,353.25 + \$256,388.33 + 331,155.56, which are the amounts of revenue applicant received from student revenues and fees during its 1998, 1999 and 2000 fiscal years.

6. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues shown on the last line of the third column. Thus, $\$816,897.14 / \$3,267,036.46 = 0.2500$ (rounded four places past the decimal) or 25%.

Concessions	\$ 14,694.65	<1%
Gift Certificates	\$ 182,594.20	6%
Miscellaneous Income	\$ 218,153.37	7%
Coupons & Merchandise Sales	\$ 17,452.01	1%
TOTAL	\$ 3,267,036.46	100%

Applicant Ex. Nos. 27 and 28.

20. Applicant's program expenses for the same fiscal years were as follows:

SOURCE	TOTAL EXPENSES	% OF PROGRAM/ SUPPORT SERVICE EXPENSES	% OF TOTAL EXPENSES
Program Expenses			
Administrative Personnel	\$ 273,961.94	24%	17%
Teaching/ Instruction	\$ 329,809.87	29%	20%
Rehearsal/Performance Space Rental	\$ 94,713.59	8%	6%
Music & Equipment Rental	\$ 29,071.41	3%	2%
Tour Expenses	\$ 95,471.43	8%	6%
Travel, Retreats & Exchanges	\$ 184,309.26	16%	11%
Competition Expenses	\$ 5,645.28	1%	<1%
Concerts & Competitions	\$ 20,762.35	2%	1%
Guests & Honorariums	\$ 13,388.70	1%	1%
Concessions	\$	1%	1%

	9,988.28		
Entry Fees	\$ 280.00	<1%	<1%
Capital Campaign	\$ 4,846.61	<1%	<1%
Summer Camp & Orchestra Tuition	\$ 500.00	<1%	<1%
Student Financial Aid	\$ 44,886.88	4%	3%
Other Instruction	\$ 5,321.32	<1%	<1%
Recording Concerts	\$ 10,684.20	1%	1%
Total Program Services	\$ 1,123,641.12	100%	68%
Support Service Expenses			
Marketing	\$ 69,963.51	13%	4%
Professional Fees	\$ 7,316.85	1%	<1%
Professional Association Dues	\$ 2,718.00	1%	<1%
Office	\$ 75,604.33	14%	5%
Bank Charges	\$ 3,374.17	1%	<1%
Telephone	\$ 6,881.36	1%	<1%
Administrative Assistants	\$ 61,999.92	12%	4%
In Kind Donations	\$ 18,381.87	3%	1%
Insurance	\$ 5,619.95	1%	<1%
Building	\$ 2,090.55	<1%	<1%
Miscellaneous	\$ 46,826.91	9%	3%
Utilities	\$ 1,705.03	<1%	<1%
Payroll Taxes	\$ 41,032.88	8%	2%

Gift Certificate Expenses	\$ 176,929.74	33%	11%
Depreciation	\$ 8,715.48	2%	1%
Total Support Services	\$ 529,160.55	100%	32%

TOTAL EXPENSES			
Total Support Services	\$ 529,160.55	100%	32%
Plus Total Program Services	\$ 1,123,641.12	100%	68%
EQUALS TOTAL EXPENSES	\$1,652,801.67		100%

Id.

D. Applicant's Ownership and Use of the Subject Property

21. Applicant obtained ownership of the subject property by means of a quitclaim deed dated February 27, 1998. Applicant Ex. No. 21.
22. Applicant's purchase of the subject property was part of a larger plan for the re-development of the former Fort Sheridan, which was closed by an Act of Congress in 1989. Tr. pp. 131-132.
23. The subject property is improved with a 79,511 square foot building that was formerly used as the Fort Sheridan jail house. Tr. pp. 11, 131-132, 137-138.
24. The improvement required extensive renovations in order to be suitable for applicant's purposes. However, the federal, state and local authorities overseeing re-development of the former Fort Sheridan Property imposed numerous restrictions on the types of renovations applicant was be permitted make. Applicant Ex. No. 24; Tr. pp. 146-147.

25. Applicant worked with the authorities to resolve issues pertaining to these restrictions, and then actively and continuously engaged in necessary renovations from March of 1998 until it received a certificate of occupancy in June of 2000. Tr. Tr. pp. 147-148.

CONCLUSIONS OF LAW:

An examination of the record establishes that applicant has not demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from real estate taxes for any part of the 1998 assessment year and the entire 1999 assessment year. Accordingly, under the reasoning given below, the determinations by the Department that said property does not qualify for such exemption under 35 ILCS 200/15-35 and/or 35 ILCS 200/15-65(a) should be affirmed. In support thereof, I make the following conclusions:

A. Constitutional and Statutory Considerations

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

In furtherance of its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1-1 *et seq* (hereinafter the “Code”). The provisions of that statute which govern disposition of the present matter are contained in Sections 15-35 and 15-65 of the Code, which, in relevant part, provide for the exemption of:

200/15-35. Schools

§ 15-35. All property donated by the United States for school⁷ purposes, and all property of schools, not sold or

7. The legal definition of the term “school” is, for property tax purposes, as follows:

leased or otherwise used with a view to profit, is exempt, whether owned by a resident or non-resident of this State or by a corporation incorporated in any State of the United States. Also exempt is:

(b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, including, but not limited to, student residence halls, dormitories and other housing facilities, and school owned and operated dormitory or residence halls occupied in whole or in part by students who belong to fraternities, sororities or other campus organizations.

35 ILCS 200/15-35.

200/15-65. Charitable Purposes

§ 15-65. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity.

35 ILCS 200/15-65(a)

B. The Burden of Proof and Other Introductory Considerations

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People Ex Rel. Nordland v. the

A school, within the meaning of the Constitutional provision, is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning, which would make the place a school in the common acceptation [sic] of the word.

Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Furthermore, applicant bears the burden of proving by clear and convincing evidence that the property it is seeking to exempt falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994). Therefore, any and all doubts that arise in an exemption proceeding, whether they be attributable to evidentiary deficiencies, debatable factual interpretations or questions of statutory construction, must be resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*.

C. The Charitable Exemption – 35 ILCS 200/15-65(a)

The statutory requirements for exemption under Section 15-65(a) are: (1) exempt ownership, which means that the property in question must be owned by a duly qualified “institution of public charity” (Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968)); and, (2) exempt use, which means that the property must be exclusively or primarily used for the purposes that qualify as “charitable” within the meaning of Illinois law. Methodist Old People's Home, *supra*; Morton Temple Association, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987); Albion Ruritan Club v. Department of Revenue, 209 Ill. App. 3d 914 (5th Dist. 1991).

Here, applicant was actively adapting and developing the subject property for uses connected with its various musical programs throughout the period currently under

People v. Trustees of Schools, 364 Ill. 131 (1936); People ex rel Brenza v. Turnverein Lincoln, 8 Ill.2d 188 (1956).

review.⁸ Applicant undertook this adaptation and development so that it could use said property for purposes that fulfill its organizational mission of providing training in various musical disciplines to youth. Therefore, the threshold question herein is whether applicant qualifies as an "institution of public charity."

1. Lack of Exempt Ownership

By definition, an "institution of public charity" operates to benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise reduces the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). It also : (1) has no capital stock or shareholders; (2) earns no profits or dividends, but rather, derives its funds mainly from public and private charity and holds such funds in trust for the objects and purposes expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and, (5) does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home v. Korzen, *supra*.

These factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant: (1) primarily serves non-exempt interests, such as those of its own dues-paying members (*see*, Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App.

8. This period runs from the date applicant obtained ownership of the subject property, February 27, 1998, through end of the 1999 assessment year, December 31, 1999. (*See*, Applicant Ex. Nos.

3d 794, 796 (3rd Dist. 1987)) or, (2) operates primarily in the public interest and lessens the State's burden. (*see*, DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations), *supra*; Randolph Street Gallery v. Department of Revenue, 315 Ill. App.3d 1060 (1st Dist. 2000)).

Fine arts organizations can qualify for exempt status, but only if they operate primarily in the public interest (Randolph Street Gallery, *supra*;) and do not place exclusionary obstacles in the way of anyone seeking to receive their services. (Resurrection Lutheran Church v. Department of Revenue, 212 Ill. App.3d 964 (1st Dist. 1991)). Here, applicant employs a rigorous audition process that is inherently exclusionary toward those who demonstrate some ability to perform but do not exhibit the technical proficiency that applicant requires. Applicant's director, Allan Dennis, established the exclusionary features of this process via his testimony:

- Q. [By applicant's counsel] Just to clarify, has the opening of the facility at Fort Sheridan, which is at the heart of this proceeding, has that lead to [applicant] being able to increase the number of students it can accommodate?
- A. [By Dr. Dennis] Well of course, and of course, we are planning on – we have plans for growth into the band area and the music technology area, into the music recording area, as well as to expand our chamber music program well beyond what it currently is. Next year, the jazz gentleman, Frank Portolese, has talked about offering instead of – if I am allowed to digress, but one of the issues that I have been – I felt bad about in developing the organization, because there is very few that I feel bad about, is that *we have not been able to offer the experience to all the students who come into audition*. It is not a matter of money, because anybody that wants to be a part of the organization, we never have turned anyone – we have a policy that nobody is excluded for financial reasons. *It is a question of a child comes in and they will audition, and they are not quite ready technically. They can't quite play their horn as well as they should, but they have the desire*. And unfortunately, because we have been limited on days as to when we could do it, we have not been able to take them.

21, 24; Tr. pp. 145-149).

Tr. pp. 34-35 (emphasis added).

The Randolph Street applicant employed no such exclusionary audition process. Randolph Street, *supra*, at 1062. Nor did the applicant in Resurrection Lutheran Church, wherein the court held in favor of exempting real estate leased to a dance studio that doubled as an art exhibition gallery on grounds that the applicant therein did not place any *financial* obstacles in the way of those who wished to receive its services. Resurrection Lutheran Church v. Department of Revenue, *supra*, at 967-968, 970-972.

This applicant may not exclude anyone for financial reasons. (Applicant Group Ex. Nos. 7, 8, 9,10; Applicant Ex. No. 12; Tr. pp. Tr. pp. 33, 35, 44). Nevertheless, Dr. Dennis's testimony establishes that this applicant employs an audition process that *does* exclude those who fail to demonstrate whatever level of technical proficiency applicant requires. Consequently, unlike Randolph Street and Resurrection Lutheran Church, this applicant fails to qualify as an "institution of public charity" because it operates primarily for the benefit of that limited class of persons who are able to satisfy the technical requirements applicant imposes via its auditions process. Therefore, those portions of the Department's determinations which found that the subject property is not in exempt ownership because it not owned by a duly qualified "institution of public charity," as required by 35 **ILCS** 200/15-65(a), should be affirmed.

2. Lack of Exempt Use

The word "exclusively" when used in Section 15-65(a) and other property tax exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). Furthermore, the adaptation and

development of real estate can constitute exempt use in some circumstances. Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987). However, those circumstances are limited to ones wherein the property is being developed for one or more specifically identifiable “charitable” purposes. *Id.*

Here, the subject property was being developed as a venue for providing musical rehearsal and performance experience primarily to that limited class of youth whom applicant admits via its exclusionary audition process. Such uses fail to qualify as “exclusively charitable” for the reasons set forth above. Therefore, those portions of the Department’s determinations which found that the subject property is not in “exclusively used for charitable or beneficent purposes,” as required by 35 **ILCS** 200/15-65(a), should be affirmed.

D. The School Exemption – 35 **ILCS** 200/15-35.

A party seeking exemption under Section 15-35 must prove that it provides a course of study that: (1) fits into the general scheme of education required by the State and supported by public taxation; and, (2) substantially lessens what would otherwise be a governmental function and obligation. Chicago & Northeast Illinois District Council of Carpenters v. Illinois Department of Revenue, 293 Ill. App.3d 600 (1st Dist. 1997), *leave to appeal denied*, April 1, 1998; Coyne Electrical School v. Paschen, 12 Ill.2d 387 (1957); Board of Certified Safety Professionals of the Americas v. Johnson, 112 Ill. 2d 542 (1986); Winona School of Professional Photography v. Department of Revenue, 211 Ill. App.3d 565 (1st Dist. 1991).

Factors to be considered in ascertaining whether applicant satisfies these criteria include, *inter alia*, whether applicant has obtained or maintains State accreditation for its

program. Illinois College of Optometry v. Lorenz, 21 Ill. 219, 221 (1961). This applicant presented no evidence establishing that it held or maintained the requisite accreditation during the period in question. Absent that evidence, applicant, which bears the burden of proof as to all elements of its exemption claim (Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994)), has failed to prove that its property qualifies for exemption under Section 15-35 of the Property Tax Code. Therefore, those portions of the Department's determinations which found that the subject property does not qualify for such exemption should be affirmed.

F. Final Considerations and Summary

The fact that applicant is exempt from federal income tax does not alter any of the above conclusions. This exemption proves that applicant qualifies as an exempt entity for purposes of Section 501(c)(3) of the Internal Revenue Code. However, Section 501(c)(3) does not preempt any of the exemption provisions discussed above. Moreover, the Section 501(c)(3) exemption does not establish that the subject property was actually used for exempt purposes during the period currently under review. In re Application of Clark v. Marion Park, Inc., 80 Ill. App. 3d 1010, 1012-13 (2nd Dist. 1980), citing People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970). Therefore, said exemption does not constitute a legally sufficient basis for altering any of the conclusions stated above.

Nor does applicant's exemption from Illinois Use and related sales taxes. This exemption arises pursuant to Section 3-5(3) of the Use Tax Act, 35 **ILCS** 105/1, *et seq.*, wherein tangible personal property "purchased by a not for profit music or dramatic arts organization that is exempt [from federal income tax] under Section 501(c)(3) of the

Internal Revenue Code and that is organized and operated for the presentation of live public performances of musical or theatrical works on a regular basis,” is exempted from Illinois Use Tax. 35 **ILCS** 105/3-5(3).

Section 3-5(3) is a very specific provision that neither mentions nor strictly applies to “institutions of public charity.” Such institutions in fact derive their exempt status for Use Tax purposes under a separate provision of the Use Tax Act, that being 35 **ILCS** 105/3-5(4). Furthermore, Article IX, Section 6 of the Illinois Constitution of 1970, which states that “[t]he General Assembly by law may exempt from taxation *only* the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes,” operates as a limitation on the power of the General Assembly to exempt real estate from taxation. Ill. Const. 1970, Art. IX, Sec. 6 (emphasis added); Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Therefore, as a matter of Constitutional law, the General Assembly can not broaden or enlarge the real estate tax exemptions permitted by the Constitution or grant exemptions other than those authorized thereby. *Id.*

The Illinois Constitution of 1970 does not authorize the General Assembly to pass legislation that exempts *per se*, real estate owned and/or used by the types of entities described in Section 3-5(3) of the Use Tax Act. Consequently, applicant’s exemption from Illinois Use and related sales taxes, which arises under Section 3-5(3) of the Use Tax Act, has no impact on the decisive issue herein.

In summary, the subject property does not qualify for exemption from real estate taxes for the period under review mostly because applicant’s primary objective, as

established by the testimony of its director, Allan Dennis, is to provide musical training, rehearsal and performance experience primarily to that limited class of persons who are able to satisfy the technical requirements applicant imposes via its auditions process. As such, the purposes for which applicant was developing said property, all of which were designed to fulfill that non-exempt organizational objective, fail to qualify as “exclusively charitable” within the meaning of 35 **ILCS** 200/15-65(a). Moreover, applicant has failed to sustain its burden of proof as to the exemption set forth 35 **ILCS** 200/15-35 of the reasons set forth above. Therefore, the Department’s determinations herein, denying the subject property exemption from real estate taxes for the period February 27, 1998 through December 31, 1999 under Sections 15-65(a) and 15-35 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*, should be affirmed.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that:

- A. Real estate identified by Lake County Parcel Index Number 16-10-401-010 not be exempt from real estate taxes for any part of the 1998 assessment year under Sections 15-35 and 15-65 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*;
- B. Real estate identified by Lake County Parcel Index Number 16-10-401-009 not be exempt from real estate taxes for any part of the 1999 assessment year under Sections 15-35 and 15-65 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

February 19, 2002
Date

Alan I. Marcus
Administrative Law Judge